DOCUMENT RESUME

ED 112 805 HE 006 861

TITLE More Assurances Needed That Colleges and Universities With Government Contracts Provide Equal Employment Opportunity. Departments of Labor and Health, Education, and Welfare.
INSTITUTION Comptroller General of the U.S., Washington, D.C.
PUB DATE 25 Aug 75
NOTE 48p.

EDRS PRICE MF-$0.76 HC-$1.95 Plus Postage
DESCRIPTORS *Affirmative Action; Colleges; *Equal Opportunities (Jobs); *Government Role; Guidelines; *Higher Education; *Performance Specifications; *Program Administration; Program Development; Universities

ABSTRACT

The Department of Labor is responsible for the Federal program to insure that contractors and subcontractors provide equal employment opportunity. Labor has delegated to 11 other agencies--including the Department of Health, Education, and Welfare (HEW)--the responsibility for performing compliance reviews of contractors' facilities and enforcing Labor's guidelines. HEW, however, has made minimal progress in making sure that colleges and universities have accepted affirmative action programs and are in compliance with the Executive action programs. HEW has not consistently sent required "show-cause" notices to colleges and universities whose affirmative action programs it has found to be not in compliance, it has not begun sanctions against these institutions, and has not generally performed preaward reviews. HEW negotiates and conciliates with colleges and universities over prolonged periods rather than requiring them to prepare acceptable affirmative action programs within the time specified under Labor guidelines. Neither Labor nor HEW has identified all colleges and universities that have Government contracts and are subject to the program. HEW has not provided a uniform nationwide training program for its compliance officers. Recommendations follow. (Author/KE)

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BY THE COMPTROLLER GENERAL OF THE UNITED STATES

More Assurances Needed That Colleges And Universities With Government Contracts Provide Equal Employment Opportunity

Departments of Labor and
Health, Education, and Welfare

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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GAO is making several recommendations to the Secretaries of Labor and Health, Education, and Welfare to improve the administration of the contract compliance program for colleges and universities. This program is intended to insure that Government contractors follow equal employment practices.

The Department of Health, Education, and Welfare administers the program. The Department of Labor prescribes guidelines.

HE006 861

MWD-75-72

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AUG 25 1975

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-167015

The Honorable Ronald V. Dellums
House of Representatives

Dear Mr. Dellums:

In accordance with your January 22, 1974, request, we have reviewed the Federal nonconstruction contract compliance program for colleges and universities.

The contract compliance program is intended to insure that Government contractors follow equal employment opportunity principles and practices. The Department of Health, Education, and Welfare administers the program at colleges and universities in accordance with Department of Labor guidelines.

We are making several recommendations to the Secretaries of Labor and Health, Education, and Welfare to improve the administration of the program for colleges and universities.

As you know, at the request of the Chairman of the Subcommittee on Fiscal Policy, Joint Economic Committee, and Senator Jacob K. Javits, we recently reviewed the effectiveness of the management of the contract compliance program as it relates to nonconstruction industries. We did most of our audit work at the Department of Labor's Office of Federal Contract Compliance, the Department of Defense, and the General Services Administration and limited work at the other Government agencies (including the Department of Health, Education, and Welfare) responsible for administering the contract compliance program.

In our report based on that review, "The Equal Employment Opportunity Program For Federal Nonconstruction Contractors Can Be Improved" (MWD-75-63; Apr. 29, 1975), we included several recommendations to the Secretary of Labor for improving the contract compliance program. The recommendations concerned such areas as program guidance, identification of contractors subject to the program, enforcement actions, preaward reviews, program monitoring, and training of compliance officers. Thus, recommendations to the Secretary of Labor on these areas, though applicable, are not included in this report.

As your office requested, we discussed this report with officials of the Departments of Labor and Health, Education, and Welfare and the University of California at Berkeley. However, we did not give these officials and other affected parties an opportunity to formally examine and comment on this report. This fact should be considered in any use made of the information presented.

We believe that the contents of this report would be of interest to committees and other Members of Congress, compliance agencies, and others and, as agreed with your office, we are distributing it accordingly.

Sincerely yours,

Comptroller General
of the United States

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ABBREVIATIONS

AAP	affirmative action program
GAO	General Accounting Office
HEW	Department of Health, Education, and Welfare
NASA	National Aeronautics and Space Administration
OCR	Office for Civil Rights
OFCC	Office of Federal Contract Compliance
UCB	University of California, Berkeley

COMPTROLLER GENERAL'S REPORT
TO THE HONORABLE
RONALD V. DELLUMS
HOUSE OF REPRESENTATIVES

MORE ASSURANCES NEEDED THAT COLLEGES AND UNIVERSITIES WITH GOVERNMENT CONTRACTS PROVIDE EQUAL EMPLOYMENT OPPORTUNITY

Departments of Labor and
Health, Education, and Welfare

D I G E S T

The Department of Labor is responsible for the Federal program to insure that contractors and subcontractors provide equal employment opportunity.

Labor has delegated to 11 other agencies--including the Department of Health, Education, and Welfare (HEW)--the responsibility for performing compliance reviews of contractors' facilities and enforcing Labor's guidelines. (See p. 1.)

HEW, however, has made minimal progress in making sure that colleges and universities have acceptable affirmative action programs and are in compliance with the Executive order establishing the program.

As of December 9, 1974, only 29 colleges and universities had HEW-approved affirmative action programs.

Between 1,100 and 1,300 colleges and universities are subject to the program and most are required to have written affirmative action programs. (See p. 7.)

HEW has not consistently sent required "show-cause" notices to colleges and universities whose affirmative action programs it has found to be in noncompliance, nor has it begun sanctions against these institutions. (See p. 8.)

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Preaward reviews are generally not being performed. (See p. 12.)

HEW is negotiating and conciliating with colleges and universities over prolonged periods rather than requiring them to prepare acceptable affirmative action programs within the time specified under Labor guidelines. (See p. 13.)

Neither Labor nor HEW has identified all colleges and universities which have Government contracts and are subject to the program. (See p. 18.)

HEW's lack of definitive program guidance is hindering its regional offices' enforcement efforts. (See p. 20.)

HEW has not provided a uniform nationwide training program for its compliance officers. (See p. 23.)

HEW failed in certain instances to properly enforce the program at the University of California at Berkeley. (See ch. 3.)

GAO believes that certain sections of Labor's guidelines for the program are contradictory and need to be clarified. (See pp. 33 to 37.)

RECOMMENDATIONS

The Secretary of Labor should require the Office of Federal Contract Compliance to:

--Evaluate HEW's contention that Labor's procedural guidelines are impractical for colleges and universities and, if appropriate, modify the guidelines as they apply to those institutions. (See p. 26.)

--Evaluate Labor's program guidelines and clarify those sections found to be contradictory or inconsistent. (See p. 37.)

The Secretary of HEW should:

--Require the Office of Civil Rights to expedite the development of compliance standards for colleges and universities and the training of compliance staff.

--Require the Office of Civil Rights to enforce the contract compliance program b issuing show-cause notices and initiating enforcement actions against colleges and universities not in compliance with Labor's guidelines.

--Emphasize to all HEW contracting officers the importance of obtaining required clearances before awarding contracts.

--Require the Office of Civil Rights to perform preaward reviews in accordance with Labor guidelines. (See p. 26.)

Tear Sheet

CHAPTER 1

INTRODUCTION

The Federal contract compliance program is carried out pursuant to Executive Order 11246, signed by the President in 1965 and amended in 1967. The Executive order (1) forbids employment discrimination by Government contractors and subcontractors on the basis of race, color, religion, sex, or national origin and (2) requires Government contractors to take affirmative action to insure that equal opportunity is provided in all aspects of employment. The program is divided into two segments--construction and nonconstruction.

The Secretary of Labor has delegated overall program responsibility--except for the authority to issue general rules and regulations--to the Director of the Office of Federal Contract Compliance (OFCC) of the Department's Employment Standards Administration. OFCC's responsibilities include providing guidance to other Government agencies and monitoring the program. The Director of OFCC has delegated primary responsibility for enforcing the program at nonconstruction contractors' facilities to the following 11 Federal agencies (designated as compliance agencies).

--Department of Agriculture.

--Department of Commerce.

--Department of Defense.

--Department of Health, Education, and Welfare (HEW).

--Department of the Interior.

--Department of the Treasury.

--Department of Transportation.

--Energy Research and Development Administration.

--General Services Administration.

--United States Postal Service.

--Veterans Administration.

The compliance agencies are responsible for reviewing nonconstruction contractors within industries assigned to them by OFCC. Assignments are made primarily on the basis of standard industrial classification codes, irrespective of which Government agency has entered into the contract. Under this system HEW is assigned compliance responsibility for higher education institutions, hospitals, nonprofit organizations, and insurance companies. HEW is also responsible for State and local government agencies holding HEW contracts.

HEW's Office for Civil Rights (OCR) is responsible for administering the contract compliance program for all assigned industries except for insurance companies, which are the responsibility of the insurance compliance staff of HEW's Social Security Administration. Two OCR headquarters divisions and 10 regional offices enforce the Executive order and implementing guidelines. The 10 regional offices administer the program within their assigned geographical areas. Within OCR headquarters, the Higher Education Division is responsible for enforcement at colleges and universities, while the Contract Compliance Division enforces OCR's remaining responsibilities under the Executive order. The Higher Education Division also handles certain other activities, including enforcing title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), which forbids discrimination by recipients of Federal assistance on the basis of race, color, or national origin.

The Secretary of Labor has issued program guidelines, which provide that, with certain exceptions, the program provisions are applicable to all contractors which have Government contracts of $10,000 or more. The guidelines also require nonconstruction contractors with 50 or more employees and a Government contract of $50,000 or more to prepare a written affirmative action program (AAP) applicable to each of its facilities within 120 days after the contract begins. Contractors are required to keep their AAPs on file and to furnish them to the compliance agency upon request. The guidelines also provide that the Director of OFCC may authorize an agency to exempt a contract from the requirements of

the contra t compliance program if he deems that special circumstances in the national interest so require.

Before January 1973, public institutions, including colleges and universities under State or local government control, which had Government contracts were required to take action to insure nondiscrimination and to comply with the Executive order but were exempted from the requirements for maintaining written AAPs. However, if a compliance review disclosed deficiencies in an institution's employment practices, it was required to provide written commitments about precise actions to be taken to correct the deficiencies and dates for completion. Effective January 19, 1973, Department of Labor guidelines were amended and now require public colleges and universities to prepare written AAPs if they have 50 or more employees and a Government contract of $50,000 or more. Accordingly, all such schools were required to have prepared written AAPs within 120 days of January 19, 1973, or by May 19, 1973.

To meet the standards for acceptability set forth in Labor guidelines, the AAP must contain specific data, including:

1. A utilization analysis--an analysis of all major job groups at the facility, with explanation if minorities or women are currently being underutilized in any job groups. Underutilization is defined as having fewer minorities or women in a particular job group than would reasonably be expected by their availability.

2. Analyses of other aspects of the contractor's employment policies, including recruitment, hiring, placement, promotions, terminations, and training for employees, to determine whether there is an adverse impact on either minorities or women in any of these areas. An analysis of the wages and salaries paid a sampling of minorities and women to determine whether an incumbent's race or sex has any relationship to differences in salaries or rates of pay, and an analysis of jobs with substantial concentrations of women or minorities to determine whether the concentration is a result of past discrimination.

3. Goals for improving employment opportunities of minorities and females in those areas where the contractor is found to be deficient and timetables for achieving those goals.

The guidelines further provide that, before a contract of $1 million or more is awarded, the contracting agency must notify the prospective contractor that before the award it will be subject to a compliance review to determine whether it maintains nondiscriminatory hiring and employment practices and is taking affirmative action to insure that individuals are treated without regard to race, color, religion, sex, or national origin. The contracting agency must also request the compliance agency to provide it with (1) a determination concerning the contractor's compliance and (2) clearance for awarding the contract. If the compliance agency has not performed a compliance review of the contractor within the preceding 12 months, clearances may not be granted until the compliance agency performs a review and finds the contractor in compliance.

The guidelines also provide that Labor can assume jurisdiction over any matter pending before a compliance agency and conduct such investigations, hold such hearings, make such findings and recommendations, order such sanctions, and take such other action it considers necessary or appropriate to achieve the order's purposes.

During compliance reviews (including preaward reviews, initial compliance reviews, followup reviews, and complaint investigations), a compliance officer conducts an indepth and comprehensive analysis of each aspect of the contractor's employment policies, systems, and practices to determine adherence to the nondiscrimination and affirmative action requirements. If the compliance agency finds that the contractor has not prepared a required AAP, has deviated substantially from an approved AAP, or has an unacceptable program, a show-cause notice must be issued.

The show-cause notice gives the contractor 30 days to show cause why enforcement procedures should not be instituted. According to an OFCC official, in certain cases the show-cause period can be extended if the contractor can show good cause and requests such an extension from OFCC. If the

contractor cannot show good cause for his failure to comply with the program or does not remedy that failure, appropriate sanctions must be initiated after the contractor has been given the opportunity to request a formal hearing. The sanctions available include contract cancellation, termination, or suspension in whole or in part or debarment of the contractor from future Government contracts.

According to Labor guidelines, the Director of OFCC or an appropriate agency official, with the approval of the Director, may convene a formal hearing to determine whether sanctions should be invoked against a contractor.

SCOPE OF REVIEW

This report deals only with HEW's administration of the nonconstruction contract compliance program at colleges and universities. We reviewed the Executive order and related Labor and OFCC guidelines. We examined reports, correspondence, and other records of OCR and OFCC and reviewed actions taken with respect to the development of an AAP by the University of California, Berkeley (UCB). Our review was performed at the HEW regional offices for civil rights in Dallas and San Francisco and HEW and Labor headquarters offices in Washington, D.C.

We discussed our findings with Labor, HEW, and UCB officials. However, as requested by Congressman Dellums' office, we did not give these officials and other affected parties an opportunity to formally examine and comment on this report.

Our fieldwork at the Dallas and San Francisco regional offices was completed in mid-1974, and information pertaining to these offices is dated accordingly. We obtained other subsequent information from OCR headquarters.

CHAPTER 2

IMPROVEMENTS NEEDED IN THE CONTRACT COMPLIANCE PROGRAM AT COLLEGES AND UNIVERSITIES

OCR estimates that it is responsible for enforcing the Executive order and related guidelines at between 1,100 and 1,300 colleges and universities nationwide. OCR has made very limited progress in insuring that these institutions have acceptable AAPs and are in compliance with the Executive order and the guidelines. More specifically:

--As of December 9, 1974, only 29 colleges and universities subject to the Executive order had OCR-approved AAPs. OCR officials believe that most colleges and universities subject to the Executive order are required to have written AAPs. As a result, neither Labor, OCR, nor most of the colleges and universities know whether the institutional programs undertaken or planned comply with the Executive order and implementing guidelines.

--OCR has not consistently sent required show-cause notices to colleges and universities whose AAPs it has found to be in noncompliance, nor has it initiated sanctions against these institutions.

--Preaward reviews are generally not being performed.

--OCR is negotiating and conciliating with colleges and universities over prolonged periods rather than requiring them to prepare acceptable AAPS within the time specified in Labor guidelines.

--Neither Labor nor OCR has identified all colleges and universities which have Government contracts and are subject to the Executive order and implementing guidelines.

--OCR's and Labor's lack of adequate program guidance is hindering the regional offices' enforcement efforts.

--OCR has not provided a uniform nationwide training program for its compliance officers.

These deficiencies have limited the effectiveness of the contract compliance program relating to colleges and universities.

FEW COLLEGES AND UNIVERSITIES HAVE APPROVED AAPs

OCR does not have information identifying all colleges and universities subject to the requirements of the Executive order or those required to prepare AAPs. (See p. 18.) However, OCR officials estimated that 1,100 to 1,300 colleges and universities are subject to the Executive order and most of these are required to have written AAPs.

OCR headquarters information shows that, between July 1972 and December 9, 1974, OCR received the AAPs of 243 colleges and universities, of which 137 were requested and 106 were submitted voluntarily. As of December 9, 1974, OCR had reviewed and acted on only 88 AAPs--approving 29 and rejecting 59. The other 155 AAPs were still being reviewed.

Because most colleges and universities which OCR believes are required to have AAPs do not actually have approved AAPs, neither Labor, OCR, nor the institutions know whether the institutional programs undertaken or planned meet the requirements of the Executive order and implementing guidelines.

OCR headquarters information shows that the Dallas region requested and received 39 of the 243 AAPs. As of December 9, 1974, the region had approved 7, rejected 29, and was still reviewing the other 3. The San Francisco region requested and received 2 of the 243 AAPs, neither of which had been acted on as of December 9, 1974. In a memorandum to the San Francisco Regional Civil Rights

Director outlining priorities for 1974, the San Francisco Higher Education Branch chief stated that the region would provide technical assistance to colleges and universities rather than formally approving or rejecting AAPs.

He also said that the region would request institutions to submit portions of AAPs rather than complete ones. He explained that Labor's guidelines require an AAP to be approved or rejected within 60 days of receipt but believed this requirement applied only to complete AAPs. By requesting portions of AAPs, the regional office could provide technical assistance to several institutions rather than only one. At the time of our fieldwork, the San Francisco regional office planned to provide technical assistance during 1974 to 20 of the 108 institutions for which it estimates it is responsible.

These policies do not conform to Labor's guidelines, which require that compliance agencies either approve or reject AAPs and initiate sanctions against those not having an acceptable AAP.

SANCTIONS NOT INITIATED

Labor guidelines require that, immediately upon finding that a contractor has not prepared a required AAP, has an unacceptable AAP, or has deviated substantially from its approved AAP, the compliance agency must issue a show-cause notice to the contractor. The show-cause notice gives the contractor 30 days to show cause why sanctions should not be imposed. If the contractor fails to show good cause for his failure to comply with the program or fails to remedy that failure, and the show-cause period is not extended, appropriate sanctions must be imposed after the contractor has been given an opportunity to have a formal hearing.

OCR has not been consistently issuing show-cause notices to colleges and universities that have failed to prepare acceptable AAPs. According to OCR records, as of May 20, 1974, 14 institutions nationwide had been notified that their AAPs were unacceptable, for such reasons as (1) failure to prepare adequate analyses of the universities' staffs to determine whether minorities and females were being underutilized and (2) inadequate plans to take

affirmative action to recruit qualified women and minorities. Although the 14 institutions' AAPs had not been approved as of December 9, 1974, OCR still had not issued show-cause notices to any of them.

To comply with Labor guidelines, OCR would have had to issue show-cause notices to the 14 institutions when it determined that their AAPs were unacceptable. If they failed to prepare acceptable AAPs or show good cause for their failure to prepare acceptable AAPs within 30 days, and the period was not extended, OCR would have been required to impose sanctions.

OCR records show that the Dallas regional office had received and rejected 11 institutions' AAPs. One was for a large university in Oklahoma, which submitted its AAP to the regional office on January 24, 1973. The regional office's review showed that the AAP did not meet Labor guidelines and the university was advised of the deficiencies on April 16, 1973. On May 21 the university submitted a revised AAP, but it did not comply with OFCC guidelines either, and the university was so advised on August 6, 1973.

On September 6, 1973, the university submitted additional revisions and corrections to its AAP, which was again unacceptable. As of December 9, 1974, the university still did not have an approved AAP. Thus, over about 23 months the office rejected the university's AAP three times but never issued a show-cause notice or imposed sanctions.

Dallas regional officials informed us and our review confirmed that in lieu of issuing show-cause notices they had delayed the awards of contracts to institutions which were not complying with the Executive order and implementing guidelines. They stated that they have used this technique as a device to persuade institutions to comply with the program's requirements.

Information from the Dallas OCR regional office shows that, between April 1971 and October 1973, it delayed Government contract awards to five institutions for varying periods of time. However, it later approved the award of the contracts even though four of the institutions had not prepared acceptable AAPs.

For example, Dallas regional officials cited a case in which in November 1972 their office had reviewed a large university in Texas which was a Government contractor required to have an AAP. At the time of the compliance review, the university had not prepared an acceptable AAP, but as a result of the review, the university committed itself to revising its AAP by September 30, 1973.

During an October 1973 compliance review, the regional office determined that the university had still not prepared an acceptable AAP. In November 1973 the office recommended to another Government agency that a proposed $33,000 Government contract award to the university be delayed and so notified the university. On November 30 the university submitted a timetable for presenting additional AAP components, which were to complete the AAP by June 1974. Based on this submission the regional office approved the $33,000 contract award.

In a June 28, 1974, letter, the university requested an extension of the target date for submitting its AAP; the regional office granted the extension until August 26, 1974. The university met this date and, according to OCR records, the AAP was approved in November 1974.

Between November 1973 and June 1974, OCR delayed contract awards to six universities nationwide because they had no AAPs or inadequate ones. However, OCR subsequently approved the contract awards to these schools even though only one developed an acceptable AAP.

The San Francisco regional office is responsible for enforcing the Executive order and related guidelines at an estimated 108 colleges and universities in its region. San Francisco regional officials gave us information showing that more than half of these institutions were required to prepare written AAPs. However, OCR records showed that, as of December 9, 1974, the regional office had not approved or rejected any institution's AAP. OCR records show that two institutions were requested to submit their AAPs and nine others voluntarily submitted theirs.

The office emphasized providing technical assistance to institutions rather than performing compliance reviews

and approving or rejecting AAPs. Technical assistance includes (1) meeting with institutions' representatives and helping them prepare segments of an AAP and (2) conducting conferences and seminars for institutions' representatives at which topics relating to equal employment opportunity programs are discussed.

According to a San Francisco regional office official, providing technical assistance is preferable to formally enforcing the requirements prescribed by Labor guidelines because it places the compliance agency in a less threatening posture, promotes good public relations, and allows for building rapport with institutions.

Information supplied by OCR headquarters officials showed that the San Francisco regional office had requested and received only two AAPs, neither of which had been approved or rejected. However, our review in the San Francisco regional office showed that it had provided technical assistance to a number of institutions, and we selected the files relating to eight institutions for further review. Our review showed that the regional office had informed two of the eight that their AAPs were deficient. Yet, in neither instance did it issue a show-cause notice or initiate sanctions as required by Labor guidelines. We could find no evidence that the regional office had informed the other six schools whether their AAPs met the guidelines.

In one of the two instances in which the regional office had determined that the schools' AAPs were deficient, the office informed the university on January 8, 1974, of those deficiencies. However, the office also informed the university that it planned to continue to provide technical assistance, as long as such assistance led to progress, rather than officially rejecting the AAP.

We believe OCR should continue to provide technical assistance and make every effort to persuade institutions to comply with the program's requirements through mediation and conciliation. However, if institutions fail to meet their responsibilities, OCR should impose sanctions required by Labor guidelines. The practice of delaying contract awards to schools will not be effective as long as OCR

later approves the award of the delayed contracts without requiring the schools to comply with Labor's guidelines.

PREAWARD REVIEWS NOT PERFORMED

Labor guidelines require that, before a contract of $1 million or more is awarded, the contracting agency must request preaward clearance from the responsible compliance agency. If the compliance agency has not performed a compliance review of the contractor within the preceding 12 months, preaward clearance may not be granted unless the compliance agency performs a review and finds the contractor in compliance.

If an agency other than the awarding agency is the compliance agency, the awarding agency must notify the compliance agency and request appropriate action and findings about the contractor's compliance. Compliance agencies must provide awarding agencies with written reports of compliance within 30 days of the request.

In most cases OCR was advising contracting agencies that institutions appeared able to comply with the Executive order and were eligible for contract awards even though OCR had not performed a preaward compliance review or a compliance review within the preceding 12 months. For example, in November 1973 the Atomic Energy Commission requested preaward clearances for two proposed contract awards, each exceeding $1 million, to two large universities in California. OCR replied that its records indicated that each university appeared able to comply with the requirements of the Executive order and was eligible for contract awards.

Our review showed, however, that OCR had not performed (1) reviews of the schools in the 12 months before the preaward clearances or (2) preaward reviews before granting clearance.

During fiscal year 1974, HEW's National Institutes of Health awarded contracts exceeding $1 million each to 17 colleges and universities. These contracts included new contracts as well as renewals and extensions of existing ones. We reviewed the practices followed in awarding these contracts to determine if the preaward requirements were met.

The preaward review requirement was not adhered to in awarding contracts to 16 of the 17 institutions. For 7, we could find no evidence to show that the National Institutes of Health had requested the required preaward clearances or that OCR had granted them. Concerning the contracts awarded to the other 10 institutions, the National Institutes of Health requested and received preaward clearances from OCR. However, for 9 of the 10 institutions, OCR had failed to comply with the preaward requirement because OCR had not performed compliance reviews (1) within the preceding 12 months or (2) before granting preaward clearances.

OCR officials said they granted preaward clearance for the award of contracts to institutions unless OCR had reviewed the institutions' AAPs, found them deficient, and found that the institutions were not revising the AAPs in a timely manner to correct the deficiencies. This practice is not consistent with Labor regulations, which require a determination that prospective contractors are in compliance before the award of a contract.

PROLONGED CONCILIATION WITH COLLEGES AND UNIVERSITIES

The Executive order provides that compliance officers shall seek to obtain contractor compliance with the program through conferences, conciliation, mediation, or persuasion. Labor guidelines require that, when a compliance review discloses a deficiency in a contractor's equal employment opportunity program, reasonable efforts shall be made to secure compliance through conciliation and persuasion.

However, the Dallas and San Francisco regional offices were giving technical assistance to and mediating and conciliating with colleges and universities for prolonged periods to persuade them to develop acceptable AAPs.

The Dallas regional office mediated and conciliated with the 11 institutions whose AAPs it had disapproved before May 1974 for an average of about 10 months before the AAPs were disapproved. Also, after these AAPs were disapproved, the regional office continued its mediation and conciliation with these institutions. As of December 9,

1974, none of the 11 disapproved AAPs had yet been approved. The average time lapse from the month the 11 AAPs were requested to December 9, 1974, was about 20 months. For example, in February 1973 the regional office performed a review and provided assistance to a university in Texas and in January 1974 notified the university that its AAP did not conform with Labor guidelines. The school submitted a revised program in April 1974; however, as of December 9, 1974, its AAP had still not been approved.

According to information provided to OCR headquarters, as of December 9, 1974, the San Francisco regional office had requested only two universities--UCB and a university in Hawaii--to submit their AAPs for review. Chapter 3 of this report contains a detailed discussion of OCR's prolonged efforts to persuade UCB to fully comply with the program's requirements. The regional office requested the Hawaiian university to submit an AAP for review by October 1, 1973. This target date was extended to November 1, 1973, and on November 8 the regional office acknowledged receipt of the AAP. As of December 9, 1974, however, this AAP had not yet been approved.

According to OCR headquarters officials, the delay in acting on this AAP was primarily attributable to the need to develop new racial categories for minorities because those normally used (Negro, Oriental, Spanish-surnamed, and American Indian) were not appropriate for use in Hawaii.

Although the San Francisco regional office had furnished information to OCR headquarters indicating that it had requested only two institutions to submit AAPs for review, we reviewed the files relating to technical assistance which the regional office gave to eight institutions and found that the office had requested four of the institutions to submit their AAPs for review. The office advised the other four of their responsibilities under the guidelines but did not specifically request them to submit their AAPs due to the office's workload.

As of December 9, 1974, the AAPs for the four institutions requested to submit their AAPs had not been approved and the regional office had been negotiating and conciliating with them for an average of about 3 years. For example,

in June 1969 the office had performed a compliance review at a private university in California and, in response to the deficiencies noted, the university prepared an AAP. However, the AAP was disapproved, and the regional office continued providing technical assistance to and negotiating and conciliating with the university but had not approved the AAP as of December 9, 1974. In this case, the time lapse was about 5 years.

In February 1974 Labor issued guidelines effective May 1974 which provide that, within 60 days from the date an AAP is received, the compliance agency must either have found the contractor (1) in compliance and so notified it or (2) in noncompliance and issued it a 30-day show-cause notice. These guidelines also provide that, if a contractor fails to submit an AAP and supporting documents within 30 days of the request, the enforcement procedures--show-cause notices and sanctions--are to be initiated.

We believe that the credibility of the contract compliance program for institutions has been seriously impaired by OCR's abstaining from initiating sanctions and mediating, conciliating, and providing technical assistance over prolonged periods. The primary thrust and purpose of the program is to compel contractors to implement equal employment opportunity and affirmative action principles and practices which might not be undertaken on the contractors' own initiative. If contractors know that they can mediate and conciliate with OCR indefinitely without the threat of sanctions being imposed, they cannot be effectively compelled to comply with program requirements.

HEW comments and our evaluation

OCR headquarters officials said this report concentrated on the program's procedural aspects without giving sufficient consideration to its substantive requirements. According to them, it was not possible to comply with Labor's procedural and substantive requirements in enforcing the program at colleges and universities. They suggested that, if the procedural requirements were strictly adhered to, the program would become a paper exercise and making the indepth analyses necessary to determine a contractor's compliance would be difficult. They noted the following areas as

demonstrating the incompatibility between procedural and substantive requirements.

Preaward reviews

Labor guidelines require that, before the award of a contract of $1 million or more, the compliance agency must perform a preaward compliance review unless the contractor has been reviewed within the preceding 12 months. The compliance agency must make a review and report its findings within 30 days of the request.

According to HEW officials, when a preaward compliance review is required, completing a review of the AAP, persuading the college or university to resolve all deficiencies in the AAP, and completing an onsite compliance review within 30 days are often impossible. For example, OCR officials said OCR had spent approximately 40 to 50 staff-years developing UCB's AAP. They said concentrating this effort into a 30-day period would have been impossible.

Determination of compliance status

Labor guidelines issued in July 1974 state:

> "With the exception of extensions of time granted by the Director of OFCC for good cause shown, within 60 days from the date the affirmative action program including the workforce analysis is received by the agency, the compliance agency must either have found the contractor in compliance and notified the contractor of that fact, or must have issued a 30 day show cause notice as required under the rules and regulations pursuant to the Executive Order."

During this 60-day period the compliance agency must (1) perform a desk audit, (2) perform an onsite review, and (3) give the contractor notice of compliance or issue a show-cause notice.

OCR officials stated that in most instances it was impossible to meet Labor's standards of completing a compliance review and approving or disapproving the AAP of a college or university within 60 days (30 days in the case

of a preaward review). They said Labor's guidelines are oriented toward industrial or commercial concerns that usually have centralized personnel offices and hiring practices, which facilitate making compliance reviews and preparing AAPs. However, departments or divisions of large colleges and universities often have their own personnel practices and policies, which make preparing a comprehensive AAP difficult and time consuming.

We agree that our review was primarily directed toward what OCR officials termed the procedural requirements rather than the substantive requirements of the contract compliance program. For example, we examined the number of AAPs approved and disapproved rather than evaluating colleges' and universities' achievements in improving equal employment opportunity.

In any program area, if one can assume or judge that the agreed-upon or mandated process is appropriate and likely to achieve the desired results or impact, a process-oriented evaluation has merit. Significant departures in actual program implementation from that process are likely to detract from the program's effectiveness. During a process-oriented evaluation, of course, the evaluator must also be alert to apparent defects in the logic of the process.

HEW's overall progress in administering the contract compliance program suggests that existing procedural requirements of Labor's guidelines may not be practicably applied to colleges and universities. However, without conclusive evidence that the procedural requirements are impractical, we are reluctant to conclude that Labor's procedural requirements are inappropriate for colleges and universities because:

--In the past, definitive standards on the required contents of AAPs have generally not been provided to colleges and universities and to OCR's regional offices. (See p. 20.)

--Noncompliant contractors have generally not received show-cause notices or had enforcement actions initiated against them. (See p. 8.)

We believe that, after colleges and universities are given more definitive requirements and OCR's regional staff

is trained in the standards for evaluating AAPs, a sounder basis will exist for determining the extent of any necessary changes in Labor's procedural requirements relating to those institutions. In this connection we believe OFCC should (1) conduct several joint preaward and compliance reviews with OCR's staff to evaluate whether Labor's procedural requirements are appropriate to apply to colleges and universities and (2) make any needed revisions in the guidelines.

Labor comments

Department of Labor officials did not take issue with any matters discussed in this report but indicated they might comment on the report after it is issued.

NEED FOR IDENTIFYING COLLEGES AND UNIVERSITIES SUBJECT TO THE EXECUTIVE ORDER

Labor guidelines require each compliance agency to insure that the contractors in its assigned area of responsibility comply with the Executive order and implementing guidelines. OCR's long-term objective is to insure that each higher education institution with 50 or more employees and Federal contracts exceeding $50,000 has an acceptable AAP.

However, neither Labor nor OCR has established a system for identifying all institutions subject to the Executive order requirements or which are required to prepare AAPs. Without this information, OCR will not be able to (1) effectively meet its responsibilities pursuant to Labor guidelines or (2) achieve its long-term objective.

In December 1973, OCR's headquarters office estimated that approximately 500 institutions were subject to the Executive order. However, Dallas and San Francisco regional officials' estimates varied greatly from the headquarters estimates. For example, OCR headquarters estimated that 47 institutions in the Dallas region were subject to the Executive order; Dallas officials estimated that the number was closer to 161. In its annual enforcement plan dated September 1974, OCR estimated that at least 1,100 to 1,300 institutions nationwide were subject to the Executive order.

We believe it is important for OCR to know the identity of all institutions subject to the Executive order. Such information would give it a basis for assigning priority to those institutions which offer the most potential for improving minorities' and females' employment opportunities. If accurate information identifying the institutions for which each regional office is responsible is not available, we do not believe that the available employees can be assigned to regional offices to give proportionate emphasis to each region's contract compliance program.

Accurate information identifying institutions subject to the order is also necessary for investigating employment discrimination complaints. In one instance, OCR received a sex discrimination complaint against a college in California in November 1970 and attempted to identify a Federal contract exceeding $10,000 held by the institution. However, OCR was unable to identify a contract and therefore could not investigate the complaint because of lack of jurisdiction. In a March 1974 letter to the college's president, the Director of OCR's San Francisco region stated that he had recently been advised that the college had had a contract exceeding $10,000 at the time of the alleged discrimination and that OCR would investigate the complaint. Thus, the lack of accurate information caused an individual to wait about 3 years before her complaint was investigated.

At the request of the Chairman of the Subcommittee on Fiscal Policy, Joint Economic Committee, and Senator Jacob K. Javits, we recently reviewed the effectiveness of the management of the Federal contract compliance program as it relates to nonconstruction industries.

We found that, like OCR, most other nonconstruction compliance agencies did not know the identity of all contractors for which they were responsible. In our report,[1] we made a recommendation on this matter to Labor. Thus, we are including no such recommendation in this report.

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[1]"The Equal Employment Opportunity Program For Federal Nonconstruction Contractors Can Be Improved" (MWD-75-63, Apr. 29, 1975).

NEED FOR IMPROVED GUIDANCE

Labor guidelines require the head of each compliance agency to establish a program and prescribe procedures to carry out the agency's responsibilities for obtaining compliance with the Executive order and related guidelines. On October 1, 1972, OCR issued guidelines applicable to higher education institutions and sent copies to the presidents of higher education institutions throughout the Nation. This represented an effort by OCR to interpret the requirements of Labor guidelines within the context of higher education institutions. However, according to the Director of the Higher Education Division, the guidelines were not specific enough to enable institutions to understand exactly what was required of them, nor did they provide definitive guidance to OCR's regional staff for evaluating institutions' AAPs.

Officials at both regions we visited indicated that these guidelines were inadequate because they did not include (1) standards for acceptable AAPs, (2) the types of analyses to be performed, and (3) the actions which constitute a good-faith effort by colleges and universities. According to them, these inadequacies hampered their ability to adequately administer the Executive order.

For example, OCR's guidelines indicate that during onsite reviews regional offices are to select specific departments or job categories for review, but the guidelines do not provide any criteria for determining which departments or how many job categories are to be selected. Although the guidelines state that sanctions will not be imposed until reasonable mediation and conciliation efforts have been made within a reasonable period of time, they do not define reasonable efforts or a reasonable period of time.

At an August 1973 meeting, OCR representatives from headquarters and regional offices discussed the effect of the lack of comprehensive and definitive guidance. Those at this meeting examined 27 AAPs representing all types of higher education institutions and found that review procedures varied widely from region to region. Each region had used

its own criteria for establishing priorities in the review process and had its own list of materials to be requested from colleges and universities.

As a result of this meeting, OCR directed in September 1973 that the regions not request any additional AAPs until a number of policy issues involved in interpreting and implementing Labor's guidelines were resolved. In addition, OCR set as one of its objectives for fiscal year 1974 the development of standards for reviewing AAPs.

However, these standards were not developed during fiscal year 1974, and during a meeting of headquarters and regional officials in April 1974, the regional branch chiefs of the Higher Education Division recommended that their fiscal year 1975 program plan allow them to conduct only limited new complaint investigations until program policies and implementation procedures could be developed and clarified. The Director, OCR, accepted this proposal and on September 20, 1974, approved the Higher Education Division's fiscal year 1975 program plan, one of the major elements of which was the development of AAP requirement regulations.

A San Francisco regional office memorandum establishing the fiscal year 1974 operating plan for enforcing the contract compliance program at colleges and universities shows the effect of the lack of guidance on the program. It states:

> "In the absence of definitive standards, progress can more easily be made in the less formal though structured encounters provided through technical assistance than in the more formal and rigidly structured response to affirmative action plans * * * . Technical assistance is a mechanism that provides for maximum exposure over other forms of relationships with the institutions. Since it also puts us in a less threatening posture than on site compliance reviews, it promotes good public relations and allows for building of rapport with the universities."

Thus, in this case the lack of guidance led the San Francisco regional office to concentrate its efforts on technical assistance and reviewing portions of AAPs rather than performing compliance reviews and approving or disapproving complete AAPs. Although technical assistance to institutions subject to the program is an important and necessary part of OCR's program, we do not believe that OCR should so concentrate its efforts for indefinite periods in lieu of performing compliance reviews and approving or disapproving AAPs.

We believe that, since the absence of adequate standards and criteria is hindering OCR regional offices' enforcement of the Executive order at colleges and universities, OCR should emphasize prescribing adequate standards and criteria, consistent with Labor guidelines, to enable its regional offices to perform compliance reviews, review and approve or disapprove AAPs, and otherwise administer the contract compliance program consistently.

HEW comments and our evaluation

OCR headquarters officials agreed that additional policy guidance for OCR's regional offices was needed. They stated that Higher Education Division leadership had recently been changed to insure that this guidance is developed expeditiously. According to these officials, the guidance to be developed includes (1) a digest of employment case law, (2) an employment discrimination policy manual, (3) an employment discrimination investigation manual, and (4) definitive standards for evaluating AAPs of higher education institutions.

The standards to be developed for evaluating AAPs will include (1) a definition of the information and data to be included in an AAP, (2) the standards for determining the acceptability of planned affirmative action efforts, and (3) standards for determining the adequacy of good-faith efforts to implement affirmative action commitments.

Because these planned improvements will not be fully implemented until the fall of 1975, we were unable to evaluate the effect they may have on program administration.

OCR officials also stated that in the past OFCC guidance has not always been timely or complete and that this area also needed improvements. For example, OCR officials said they had on several occasions requested OFCC to provide them with a sample acceptable AAP which they could use to set standards for colleges' and universities' AAPs. According to these officials, the sample AAP was never received.

In our April 29, 1975, report (see p. 19), we discussed the need for timely and complete OFCC guidance and noted that several of the compliance agencies had experienced problems in obtaining such guidance. Labor indicated that the following actions were underway to improve its guidance to compliance agencies: (1) the development of a Federal Contract Compliance Handbook, (2) the issuance of new or revised regulations, and (3) plans to usually respond within 10 days after receiving compliance agencies' requests for specific guidance or clarification.

TRAINING OF COMPLIANCE OFFICERS

Our review showed that OCR has not provided a uniform nationwide training program for compliance officers responsible for enforcing the Executive order. Officials at both regions visited agreed that some type of formal training program was needed.

In May 1974 Labor issued a memorandum directing each compliance agency to institute training programs to insure that compliance officers were able to investigate and conciliate in a professional manner consistent with Labor policies and guidelines. Each agency was directed to insure that its compliance personnel understood all Labor regulations, orders, and guidelines.

The Dallas region's training program for newly hired compliance officers is designed to last about 8 weeks. It familiarizes them with the contract compliance program through (1) interviews with experienced compliance officers of the office, (2) meetings with local community groups, and (3) meetings with the local officers of Labor and the Equal Employment Opportunity Commission. Thereafter, new compliance officers are assigned to work with experienced

officers until the new officers have acquired sufficient experience and expertise to enable them to effectively fulfill their duties without immediate supervision.

In the San Francisco region, newly hired compliance officers are assigned to work with experienced officers for an indeterminate period. During this on-the-job training, the new officers may also learn about the contract compliance program through (1) discussions with other experienced compliance officers of the region about various aspects of the program administration and (2) meetings with local officers of Labor and the Equal Employment Opportunity Commission.

Compliance officers assigned to OCR's 10 regional offices enforce the Executive order and related guidelines at colleges and universities. We believe that, to insure that the contract compliance program is administered equitably and consistently nationwide, OCR compliance officers should receive the benefit of a uniform training program, regardless of which regional office they are assigned to.

HEW comment

OCR headquarters officials agreed that a formal training program for all compliance staff was needed. They said such a program had recently been formulated and approved by the Director of OCR to train staff in the use of standards for evaluating discrimination complaints and AAPs. The training sessions are scheduled for July through October 1975.

STAFFING

As previously indicated, the Higher Education Division is responsible for enforcing the Executive order at colleges and universities. Division staffing consists of positions designated either for enforcing the Executive order or enforcing title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and title IX of the Education Amendments of 1972 (20 U.S.C. 1681). Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance, and title IX prohibits discrimination on the basis of sex under any such education program or activity.

The Division's authorized staff for fiscal year 1975 was 175 positions--127 for enforcing the Executive order and related guidelines and 48 for enforcing titles VI and IX. As of February 28, 1975, OCR had 115 employees working on Executive order enforcement and 12 vacancies.

OCR information on the experience of professional staff members assigned to the Division as of March 15, 1974, showed that 37 (about 45 percent) of the 83 professional staff members had 3 or more years' experience with OCR. The following table shows by region the number of professional staff members and how long they had been employed by OCR.

Office	Less than 1 year	1 year to 2 years, 11 months	3 to 5 years	More than 5 years	Total
Headquarters	1	6	4	4	15
Boston	-	4	-	1	5
New York	1	3	4	3	11
Philadelphia	-	5	-	-	5
Atlanta	-	4	4	1	9
Chicago	1	3	4	-	8
Dallas	4	2	2	1	9
Kansas City	4	1	-	-	5
Denver	-	1	2	1	4
San Francisco	1	1	3	2	7
Seattle	2	2	1	-	5
Total	14	32	24	13	83

OCR officials said many professional staff members also have had other useful experience. In the Dallas region, for example, five of the nine professional staff members had advanced degrees, one of which was a law degree. One staff member also had experience as a college faculty member.

HEW's budget request to the Congress for fiscal year 1975 requested sufficient funding to enable OCR to hire an additional 28 employees. Eleven of the 28 were to be assigned to the Higher Education Division--2 to be used in policy and program development at the headquarters level and 9 to be assigned to the regional offices for duties other than Executive order enforcement, such as enforcement

of titles VI and IX. According to OCR officials, the Congress approved only 14 of the 28 positions. For fiscal years 1975 and 1976, HEW did not request nor did Labor recommend funding for additional HEW employees to enforce the Executive order.

RECENT HEW ACTIONS

After we discussed this report with OCR officials in March 1975, OCR began taking stronger action to enforce the contract compliance program. Between April and June 1975, OCR informed 12 institutions that it had reviewed their AAPs and found that the AAPs failed to meet Labor's standards. OCR also told them they were not eligible for additional Government contracts and gave them 30 days to show cause why enforcement procedures under the Executive order should not be initiated. According to an OCR official, eight other institutions will be receiving similar notices in the near future. OCR also provided 16 institutions with copies of standards to be used in judging their AAPs and asked each to review its AAP and determine whether it is in compliance. These schools were given the choice of declaring their AAPs in compliance or signing an OCR model conciliation agreement for developing acceptable AAPs. OCR stated that, if these schools determined their AAPs to be in compliance, it intended to review the AAPs to verify that determination.

RECOMMENDATIONS TO THE SECRETARIES OF LABOR AND HEW

We recommend that the Secretary of Labor:

--Require OFCC to evaluate OCR's contention that Labor's procedural guidelines are impractical for colleges and universities and, if appropriate, modify the guidelines as they apply to those institutions.

We recommend that the Secretary of HEW:

--Require OCR to expedite the development of compliance standards for colleges and universities and the training of compliance staff.

--Require OCR to enforce the contract compliance program by issuing show-cause notices and initiating enforcement actions against colleges and universities not in compliance with Labor's guidelines.

--Emphasize to all HEW contracting officers the importance of obtaining required clearances before awarding contracts.

--Require OCR to perform preaward reviews in accordance with Labor guidelines.

On the basis of our recent review of the effectiveness of the management of the Federal contract compliance program as it relates to nonconstruction industries, we recommended, in our April 29, 1975, report (see p. 19), several ways for the Secretary of Labor to improve the program. The recommendations concerned such areas as program guidance, identification of contractors subject to the program, enforcement actions, preaward and followup reviews, program monitoring, and training of compliance officers. Thus, we are not including recommendations to the Department of Labor on these areas in this report.

CHAPTER 3

ENFORCEMENT OF THE

CONTRACT COMPLIANCE PROGRAM AT UCB

In the spring of 1972, after prolonged negotiations over procedural and jurisdictional issues, OCR conducted a compliance review of UCB. On November 27, 1972, OCR sent UCB a detailed 120-page letter of findings describing the deficiencies in UCB's equal employment opportunity posture, particularly in the utilization of women in academic positions. Specifically, OCR found, among other things, that UCB (1) failed to affirmatively recruit qualified women, (2) underutilized women in many departments, (3) used different or more stringent standards for women than for men, and (4) maintained policies discriminatory to women. The letter requested that UCB develop a program within 30 days to overcome these deficiencies.

Before May 19, 1973, public colleges and universities such as UCB were not required to prepare written AAPs meeting all Labor requirements. Rather, such institutions were required to prepare written "programs" setting forth plans to remedy specific equal employment deficiencies disclosed by a compliance review.

On January 15, 1973, UCB submitted a partial program to overcome its deficiencies. OCR did not analyze the submission in writing because it was evident that the program did not resolve several major deficiencies. Officials of OCR's San Francisco regional office met with UCB officials on January 29 and February 14, 1973, to discuss proposed revisions and additions to the program. On March 1, 1973, OCR received the draft revisions agreed to in the February 14 meeting. It analyzed the data and on March 30 notified UCB that the revisions were inadequate.

On April 30, 1973, UCB submitted further additions and revisions in response to OCR's March 30 findings. OCR analyzed this program and concluded that it still did not resolve the noted deficiencies.

Labor guidelines were revised effective May 19, 1973, to require publicly owned institutions performing as

Government contractors to prepare AAPs if they employed 50 or more employees and had a Government contract of $50,000 or more. OCR headquarters officials said that, because of this change in the guidelines, their emphasis shifted from persuading UCB to resolve deficiencies noted in OCR's November 1972 letter to requiring UCB to prepare an AAP meeting the guidelines and providing a plan to resolve deficiencies disclosed by the earlier compliance review.

On July 26, 1973, OCR hand-delivered a letter to UCB expressing dissatisfaction at its lack of progress in developing an AAP and insisting that it submit within 30 days an AAP meeting the requirements of Labor and OCR guidelines and OCR's November 27, 1972, letter. OCR also advised UCB that failure to comply would result in the issuance of a show-cause letter and could result in a determination of nonresponsibility. Attached to this letter was a copy of an OCR outline for drafting a written AAP and an analysis of the defects in UCB's previous program. At a July 30 meeting with officials of OCR's San Francisco and headquarters offices, UCB officials gave assurances that the university would meet the August 25, 1973, deadline.

However, UCB's AAP, submitted on August 27, 1973, and supplemented by additional corrective data in a September 17, 1973, letter, again failed to meet the requirements of the regulations. OCR's San Francisco office noted that some of the criticisms of the current AAP had also been directed at earlier UCB programs.

Because the program was found deficient, OCR began to consider imposing sanctions against UCB as prescribed by Labor guidelines. In an October 15, 1973. letter to the Director of OFCC, OCR stated that UCB was not in compliance with Executive Order 11246 because it failed to correct noted deficiencies and that OCR intended to send UCB a 30-day show-cause notice by October 24, 1973.

OCR did not issue such a notice to UCB. Instead on November 16, 1973, it sent a letter to UCB stating that (1) UCB's AAP still did not comply with the regulations and failed to address the findings of the November 27, 1972, compliance review report and (2) unless UCB submitted an acceptable AAP within 30 days, OCR would have "no alternative

but to conclude that UCB is unable to comply with its obligations as a Federal contractor." The letter added that OCR would ask that all pending Federal contract awards be delayed until OCR could review the revised AAP.

On December 17, 1973, UCB submitted revisions to its AAP and noted that it would take from 2 to 9 months to prepare a complete AAP and develop additional data for individual departments. OCR reviewed UCB's December 17 submission and concluded that it neither met the requirements of Labor's guidelines nor adequately addressed the findings of discrimination noted in prior letters to UCB.

According to OCR headquarters officials, however, the additional data referred to by UCB included information on race and sex of job applicants. UCB was unable to reconstruct this data for prior periods and, according to OCR officials, UCB had to be given additional time to compile it.

OCR representatives met with UCB representatives on January 18, 1974, to again discuss the AAP's deficiencies. A January 28, 1974, letter from UCB to OCR stated that UCB understood that a detailed document would be developed within the following 2 weeks setting forth all the steps necessary to arrive at a completed AAP. Based on this meeting, UCB submitted additional data to OCR on February 14, 1974. According to OCR headquarters officials, the material submitted was a draft work plan outlining the steps necessary to complete UCB's AAP.

OCR apparently accepted UCB's material as satisfactory because, in response to a National Aeronautics and Space Administration (NASA) contracting official's request for preaward approval for a contract award to UCB, OCR informed NASA on February 19, 1974, that:

> "On the basis of extensive discussions with officials of the university and a careful review of material submitted by the university on December 17, 1973, and February 14, 1974, which indicates that the university is establishing procedures that will enable it to carry out an effective program of identifying

any compliance problems which may exist at the Berkeley campus, this office has determined that the university is able to comply with the provisions of the equal opportunity clause.

"This office has, therefore, no objection at this time to the execution of contracts between the University of California, Berkeley and Federal agencies."

On February 20, 1974, OFCC requested and received from OCR the AAP and all documentation relating to UCB's compliance status. On February 21, 1974, NASA contacted OFCC to determine whether (1) it believed that UCB was in compliance with the Executive order and (2) the contract could be awarded. On February 21, 1974, OFCC notified NASA that the materials submitted by UCB did not constitute an acceptable AAP. OFCC also advised NASA that compliance program guidelines stated that, until the AAP was found acceptable, the contractor was unable to comply with the equal opportunity clause.

In a February 25, 1974, briefing paper prepared for the Secretary of Labor, OFCC recommended that (1) HEW be directed to issue a show-cause notice to UCB, (2) NASA should declare UCB nonresponsible unless it could otherwise affirmatively determine that UCB could comply with its equal employment obligations, and (3) the Secretary of Labor should notify the Secretary of HEW that agency compliance officials were not carrying out their responsibilities under Executive Order 11246 and implementing guidelines.

As an alternative, the briefing paper stated that Labor could assume jurisdiction over the matter from OCR. Labor guidelines provide that, when necessary, Labor can assume jurisdiction and conduct such investigations, make such findings and recommendations, order such sanctions, and take such other action as may be necessary or appropriate to achieve the order's purposes.

Labor did not implement OFCC's recommendations, however, and in a March 1, 1974, telegram to the Administrator of NASA, the Director of OFCC, pursuant to his authority under the guidelines, exempted in the national interest two NASA

contracts from the equal opportunity clause and stated that the contracts could be awarded to UCB.

On March 7, 1974, UCB and HEW signed a conciliation agreement detailing the steps to be taken by UCB to develop an AAP by September 30, 1974. In a March 1, 1974, press release, the Secretary of HEW stated that "As a result of this agreement Berkeley's eligibility for all Federal contracts that have been temporarily delayed since last November 16th will be reestablished." The Secretary added that he had received Labor's full support and cooperation, which was instrumental in achieving this fine result.

In a March 19, 1974, letter to NASA, OFCC indicated that HEW conciliation activities after OFCC's February 21, 1974, letter to NASA had caused OFCC to supersede its earlier letter. The March 19 letter offered no OFCC determination of UCB's compliance with the equal opportunity clause but advised NASA that it "may wish to consult with HEW officials concerning the university's compliance status." NASA, under the national interest exemption provided by OFCC, subsequently awarded at least two contracts to UCB. OCR also informed Agency for International Development and Department of Transportation officials that contracts delayed pending a determination of UCB's compliance status could now be awarded.

In accordance with the conciliation agreement, UCB submitted the materials for its AAP by September 30, 1974. OCR submitted copies of the AAP to OFCC for its review and comments. Based on OCR's analysis and OFCC's comments, additional deficiencies were identified in the AAP.

On February 18, 1975, OCR officials delivered a show-cause letter to UCB because of its failure to develop and submit an acceptable program in accordance with Labor guidelines. On the same day, UCB submitted revisions to its AAP which, according to OCR, responded to deficiencies noted by OCR and OFCC. According to OCR officials, UCB was able to prepare these revisions in advance because OCR had previously orally discussed with UCB the deficiencies and the steps necessary to correct them.

On February 18, 1975, OCR officials reviewed the revisions and concluded that the remaining deficiencies in UCB's AAP had been resolved. As a result, on that same

day OCR accepted UCB's program as meeting Labor guidelines. Subsequently, OFCC also reviewed the AAP and concluded that it met the guidelines.

Our evaluation

Labor guidelines contained in 41 C.F.R. 60-2.2(c) provide:

"(c) Immediately upon finding that a contractor has no affirmative action program or has deviated substantially from an approved affirmative action program or that his program is not acceptable, the contracting officer, the compliance agency representative or the representative of the Office of Federal Contract Compliance, whichever has made such a finding, shall notify officials of the appropriate compliance agency and the Office of Federal Contract Compliance of such fact. The compliance agency shall issue a notice to the contractor giving him 30 days to show cause why enforcement proceedings under section 209(b) of Executive Order 11246, as amended, should not be instituted.

"(1) If the contractor fails to show good cause for his failure or fails to remedy that failure by developing and implementing an acceptable affirmative action program within 30 days, the compliance agency, upon the approval of the Director, shall immediately issue a notice of proposed cancellation or termination of existing contracts or subcontracts and debarment from future contracts and subcontracts pursuant to § 60-1.26(b) of this chapter, giving the contractor 14 days to request a hearing. If a request for hearing has not been received within 14 days from such notice, such contractor will be declared ineligible for future contracts and current contracts will be terminated for default.

"(2) During the 'show cause' period of 30 days every effort shall be made by the compliance agency through conciliation,

mediation, and persuasion to resolve the deficiencies which led to the determination of nonresponsibility. If satisfactory adjustments designed to bring the contractor into compliance are not concluded, the compliance agency, with the prior approval of the Director, shall promptly commence formal proceedings leading to the cancellation or termination of existing contracts or subcontracts and debarment from future contracts and subcontracts under § 60-1.26(b) of this chapter."

Also, Labor guidelines contained in 41 C.F.R. 60-1.20(b) provide:

"(b) Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through conciliation and persuasion. Before the contractor can be found to be in compliance with the order, it must make a specific commitment, in writing, to correct any such deficiencies. The commitment must include the precise action to be taken and dates for completion. The time period allotted shall be no longer than the minimum period necessary to effect such changes. Upon approval of the Contract Compliance Officer, appropriate Deputy or the agency head of such commitment, the contractor may be considered in compliance, on condition that the commitments are faithfully kept.* * *"

These Labor guidelines require a compliance agency to immediately issue a show-cause notice to a contractor whose AAP is determined to be not acceptable. In July 1973, OCR determined that UCB's AAP was not acceptable, yet it did not issue the required show-cause notice. Instead, it continued to negotiate and conciliate with UCB until a conciliation agreement was reached in March 1974. In our opinion, during this interval (July 1973 through March 1974) OCR did not enforce the program in accordance with Labor guidelines.

HEW and OCR officials acknowledged that OCR had not issued a show-cause notice as required by Labor regulations but felt they had nevertheless achieved the end result outlined in subparagraphs (c)(2) and (b) quoted above; i.e., they had reached a conciliation agreement with UCB representing a written commitment to correct UCB's deficiencies and could find UCB in compliance. Accordingly, they believed that they had complied with the basic thrust and intent of Labor regulations.

Subparagraph (b) is unclear about what form the written commitment should take and whether the conciliation agreement is within the intent of the regulations. We note, however, that the Secretary of Labor approved the conciliation agreement with UCB.

The provisions of subparagraph (b) quoted above appear to permit a determination that a contractor is in compliance before the contractor has completed developing an acceptable AAP, if the compliance agency obtains a specific written commitment to correct any deficiencies. Thus, OCR's acceptance of the conciliation agreement as the basis for determining UCB's compliance with the program's guidelines was apparently not inconsistent with Labor guidelines as prescribed in subparagraph (b).

However, Labor guidelines elsewhere appear to be inconsistent and contradictory concerning this matter, and we believe Labor should revise them to clarify whether it is intended for compliance agencies to determine contractors in compliance with the program's requirements even though the contractors may not have prepared acceptable AAPs.

Labor guidelines require that, before compliance agencies may determine contractors to be in compliance with the program, the agencies must first affirmatively determine that contractors required to develop acceptable AAPs have done so.

Specifically, the guidelines require that:

"Any contractor required * * * to develop an affirmative action program at each of his establishments who has not complied fully with

that section is not in compliance with Executive Order 11246, as amended * * *. Until such programs are developed and found to be acceptable * * *, the contractor is unable to comply with the equal opportunity clause." (41 C.F.R. 60-2.2(a)(1))

However, as previously discussed, other provisions of the guidelines allow compliance agencies to determine that contractors are in compliance with the program despite the fact that the contractors required to develop acceptable AAPs may have failed to do so. Specifically, guidelines in 41 C.F.R. 60-1.20(b), previously quoted, provide that contractors may be found in compliance with the program if they "make a specific commitment, in writing, to correct any such deficiencies" and faithfully keep those commitments.

UCB comments and our evaluation

A university official stated that the report accurately reflects dates, events, and regulatory requirements but fails to evaluate affirmative action problems unique to colleges and universities. According to him, the report lacks objectivity in scope and should discuss affirmative action programs at some universities in the eastern United States. He felt that UCB's program was far more comprehensive and effective than other universities' programs. He also stated that our review and the resultant publicity have caused UCB to emphasize implementing its AAP.

We made our review pursuant to a congressional request; in accordance with the request, we limited our work to (1) determining HEW's overall progress in enforcing the contract compliance program and (2) reviewing HEW's enforcement of the contract compliance program at UCB. This report does discuss the development of AAPs at other colleges and universities in the regions of the two OCR regional offices included in our review--Dallas and San Francisco. However, in accordance with the request (see app. I), UCB's development of its AAP is discussed in greater detail.

HEW comments and our evaluation

Comments of OCR officials have been considered in preparing this chapter. They stated that this chapter deals with the procedural aspects of UCB's development of its AAP but fails to discuss the substantive merits of whether that AAP meets the requirements of Labor guidelines. For a discussion of this issue, see page 15.

RECOMMENDATION TO THE SECRETARY OF LABOR

We recommend that the Secretary require OFCC to evaluate Labor's Executive order program guidelines and clarify those sections found to be contradictory or inconsistent.

APPENDIX I

Congress of the United States
House of Representatives

RONALD V. DELLUMS, 7TH DISTRICT, CALIFORNIA

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DONALD R. HOPKINS
DISTRICT ADMINISTRATOR

B-167015

January 22,1974

Mr. Elmer B. Staats
Comptroller General
General Accounting Office
441 G. Street
Washington, D.C. 20548

Dear Mr. Staats:

I have reason to believe that the Office of Civil Rights, Department of Health, Education and Welfare is not meeting the intent of Congress or the letter and spirit of the applicable laws or pertinent regulations regulating its programs, policies and practices enforcing the equal opportunity responsibilities assigned to HEW.

Specifically, I am concerned that HEW Office of Civil Rights is acting contrary to established Department of Labor policy regarding compliance with equal employment opportunity standards by government contractors, particularly universities and colleges.

Therefore, I request that the General Accounting Office investigates the Office of Civil Rights to determine its conformance with appropriate laws and regulations regarding equal employment opportunity. I am interested in determining the number and background of officials and staff including their Civil Rights' experience. Also, I wish to know the frequency of compliance reviews, the number, name, and location of institutions reviewed during FY 70, 71, 72, 73, 74: the names of institutions reviewed during this period, where the affirmative action plan or actions were not acceptable: the actions taken when HEW determined an unacceptable plan or action; the conformance of HEW to

[See GAO note, p. 39.]

Federal law and regulations and a general determination of the efficiency and effectiveness of this office.

Sincerely,

Ronald V. Dellums
Member of Congress

RVD/bb:bc

GAO note: As agreed with Congressman Dellums' office, this report does not contain some of the specific information requested concerning the identity and location of institutions. Also, as requested, this report discusses the sequence of events leading to the development of an AAP by UCB.